Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

IN RE ATTORNEY_YADA

MANDAMUS TO THE UNITED STATES DISTRICT COURT

No. 15–02. Argued August 3, 2023—Decided August 7, 2023

Petitioner received a notice from the Clerk of the District Court regarding an *en banc* order that would restrict the petitioner from engaging in abusive litigation on July 17, 2023. The District Court of the United States passed this motion, and the order went into effect. Citing the Federal Rules of Civil Procedure 11(b), the District Court found a basis to make such an order. This order would require the petitioner to only participate in court cases under the supervision of a certified or licensed attorney.

Held: Mandamus was an appropriate vessel to remedy this issue as per the guidelines in *Cheney* v. *U.S. Dist. Court for the Dist. of Columbia*, 542 U. S. 367, 380. Pp. 1–4.

(a) The Due Process Clause extends to processes or procedures where the person in question is subject to loss of "life, liberty, or property." U.S. Const., Amend. XIV. Pp. 5.

(b) The test in *Safir* v. *United States Line, Inc*., 792 F.2d 19, 24 (2d Cir. 1986) suggests to other circuit courts as well as our Court today when determining whether an individual is a vexatious litigant: (1) the litigant's history of litigations and in particular whether it entailed vexatious, harassing, or duplicative suits; (2) the litigant's motive in pursuing the litigation, for example, whether the litigant had a good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused unnecessary expense to the parties or placed a needless burden on the courts; (5) whether other sanctions would be adequate to protect the courts and other parties.

BUTLER, C. J., delivered the opinion for a unanimous Court. DROZD, J.,

Syllabus

filed a concurring opinion. VINSON, J., who took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 15–02

IN RE ATTORNEY_YADA

ON WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT

[August 7, 2023]

CHIEF JUSTICE BUTLER delivered the opinion of the Court.

Petitioner received a notice from the Clerk of the District Court regarding an *en banc* order that would restrict the petitioner from engaging in abusive litigation on July 17, 2023. The District Court of the United States passed this motion, and the order was in effect. Citing the Federal Rules of Civil Procedure 11(b), the District Court found a basis to make such an order. This order would require the petitioner to only participate in court cases under the supervision of a certified or licensed attorney.

I

The writ of mandamus is among "the most potent weapons in the judicial arsenal." *Will* v. *United States*, 389 U. S. 90, 107 (1967). A very early case involving judicial writ of mandamus was *Middleton's Case*, (1573) 73 Eng. Rep. 752 (K. B.).[1] At that time, the writ's most common purpose was

[1] See Paul R. Gugliuzza, The New Federal Circuit Mandamus, 45 Ind. L. Rev. 343, 352 (2012); 1 Chester James Antieau, The Practice of Extraordinary Remedies, sec. 2.00 (1987); S.A. de Smith, The Prerogative Writs, 11 Cambridge L. J. 40 (1951).

to restore individuals to public positions from which they were wrongfully removed. By the eighteenth century, the writ had developed a broader use as an extraordinary remedy to restrain inferior courts.[2]

The first United States Congress codified this power in Section 13 and 14 of the Judiciary Act of 1789.[3] Early on, however, Chief Justice Marshall warned that use of mandamus to review interlocutory orders "would be a plain evasion of the provision of the Act of Congress, that final judgments only should be brought" before appellate courts. *Bank of Columbia* v. *Sweeney*, 26 U. S. (1 Pet.) 567, 569 (1828). Congress later consolidated the various courts' mandamus powers under the All Writs Act of 1948,[4] Section 1651(a), Title 28 of the United States Code: "The Supreme Court may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law."

Federal courts have traditionally issued the writ only "to confine an inferior court to a lawful exercise its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Gulfstream Aerospace Corp*. v. *Mayacamas Corp*., 485 U. S. 271, 289 (1988) (quoting *Roche* v. *Evaporated Milk Ass'n*, 319 U. S. 21, 26 (1943)). In accordance with this tradition, "only exceptional circumstances amount to a judicial 'usurpation of power' or a 'clear abuse of discretion'" will justify the writ. *Cheney* v. *U. S. Dist. Court for Dist. of Columbia*, 542 U. S. 367, 380 (2004) (citations and some internal quotation marks omitted).

Thus, this "drastic and extraordinary" remedy is unavailable unless three conditions are met, in addition to jurisdiction: First, "the party seeking issuance of the writ [must]

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[2] The Prerogative Writs, 11 Cambridge L. J. 51.

[3] Judiciary Act of 1789, 1 Cong. Ch. 20, secs. 13, 14, 1 Stat. 73, 80-82.

[4] Pub. L. No. 80-773, 62 Stat. 944 (1948).

have no other adequate means to attain the relief he desires"; second, that the party must satisfy "the burden that [his] right to issuance of the writ is 'clear and indisputable'"; and third, "the issuing court, in exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.*, at 380–81 (brackets, citations, and some internal quotation marks omitted). Together, these safeguards ensure that the writ does not substitute for the regular appeals process. *Ex parte Fahey*, 332 U. S. 258, 260 (1947).

In extraordinary cases, the writ of mandamus is available as a curb on intrusive discovery to preserve privilege, separation of powers, and other interests not amenable to remedy on appeal. But our Court has never approved the use of that power where, as here, the aggrieved party never sought relief in the district court.

Moreover, in the context of discovery, mandamus is only properly issued to rectify some specific abuse, not to adjudicate the propriety of a general class of discovery. Our Court recently reaffirmed that principle in *In re Dep't of Commerce*, 586 U. S. ___ (2018) (converting the government's mandamus petition challenging the scope of discovery into the residency question in the 2020 census into a petition for certiorari and granting the same).

In any event, the mandamus powers possessed by an inferior court do not entitle it to engage in the very different mission of merits of review of non-final orders.

We grant mandamus in this case on the basis of an accusation towards lower court judges acting outside the bounds of the Constitution's procedural due process guarantee. See Am. XIV of the United States Constitution ("deprive any person of life, liberty, or property, without due process of law"). We maintain our jurisdiction here, noting that The All Writs Act is not itself a grant of federal appellate jurisdiction. *In re Tennant*, 359 F.3d 523, 527 (D.C. Cir. 2004) (Roberts, J.). Rather, the Act authorizes the issuance of

writs only "'in aid of' the issuing court's jurisdiction." *Clinton* v. *Goldsmith*, 526 U. S. 529, 534 (1999). Importantly, the Act "does not enlarge that jurisdiction." *Id*., at 535. Thus, to issue mandamus, a court must grounds its jurisdiction in another source.

For example, in *Tennant*, 359 F.3d, at 528–29, the D.C. Circuit held it had no jurisdiction to issue mandamus to compel a federal agency to take action because the petitioner, having failed to initiate a proceeding with the agency, had not satisfied the statutory threshold for agency review, and therefore had not laid the groundwork for the eventual jurisdiction of the circuit court.

Writing for the court, then-Judge Roberts explained that mandamus could not be justified as "in aid of" the circuit court's jurisdiction because that jurisdiction had not been invoked. *Id*., at 530–31.

In *In re Murray Energy Corp*., 788 F.3d 330, 333 (D.C. Cir., 2015) (Kavanaugh, J.), the D.C. Circuit confirmed that a circuit court has strictly limited jurisdiction to issue mandamus. The D.C. Circuit limited in *Murray Energy* that it lacked jurisdiction to issue a writ concerning an agency's proposed rule, because the Administrative Procedure Act granted jurisdiction to the courts only to review final agency action. As then-Judge Kavanaugh clarified, "the All Writs Act does not authorize a court to circumvent bedrock finality principles in order to review proposed agency rules." *Id*., at 335. We maintain our land here by waving the Section 1651(a), Title 28 of the United States Code flag. Having planted this flag, we "aid," *ibid*, the lower court by reminding them of our holdings and jurisprudence as it relates to procedural due process. We granted review of the mandamus claims as they relate to this case. Though we do not often grant mandamus, *certiorari* was not appropriate here; there was no final judgment to appeal. There was only the unilateral order of the District Court of the United States.

II

Under the Due Process Clause, government must typically provide notice and some kind of hearing[5] before it can lawfully deprive anyone of life, liberty, or property.[6] Moreover, when pre-deprivation process is not extensive—as it not need be, for example, before someone may be deprived of government employment[7]—a fuller hearing must generally be provided before a temporary becomes final.[8]

Here, there was no hearing. There was no anything. However, the petitioner—because of an internal vote amongst the District Court—was declared a frivolous litigator. This would be the violation of the Due Process Clause, and this constitutional claim is what provides our Court with the jurisdiction to hear and review this dispute.

In a proper execution of Due Process, the inferior court would have conducted a hearing to compile answers to the following questions—(1) the litigant's history of litigations and in particular whether it entailed vexatious, harassing, or duplicative suits; (2) the litigant's motive in pursuing the litigation, for example, whether the litigant had a good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused unnecessary expense to the parties or placed a needless burden on the courts; (5) whether other sanctions would be adequate to protect the courts and other parties. See *Safir* v. *United States Line*, *Inc.*, 792 F.2d 19, 24 (2d Cir. 1986); see also *Molski* v. *Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th

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[5] See generally Henry J. Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267 (1975) (discussing the characteristic elements of a fair hearing and assessing their relative importance).

[6] See *Zinermon* v. *Burch*, 494 U. S. 113, 125–26 (1990); *Cleveland Bd. of Educ.* v. *Loudermill*, 470 U. S. 532, 542 (1985).

[7] See, *e.g.*, *Loudermill*, 470 U. S., at 545–46.

[8] See *id.*, at 547–48; see also *Goldberg* v. *Kelly*, 397 U. S. 266–68 (1970) (limited pre-deprivation procedures justified in party by availability of more extensive post-deprivation procedures).

Cir. 2007). Referred to as the *Safir* test, this test was not administered at any given moment throughout the situation. Instead, it arose in the discussion upon appeal to our Court, and the Government looked at the same test in *amicus* to us. If everyone is telling us to look at this test, why did the lower court not do so? Beats me. What does not beat me is our opportunity to fix it. However, it is also not our job to walk the lower court to inspect this test step-by-step. Therefore, our Court, the Government, and the petitioner will instruct the lower court to review this test, apply the test, and hold the hearing that gathers the answers to the five questions.

The *Safir* test compiles the necessary guidelines, and we adopt the guidelines of the Second and Ninth Circuits, *ibid*, when an inferior court must decide to label an individual as a frivolous litigator. Subsequently, we instruct the District Court of the United States to hold a hearing into the claims of vexatious litigation against the petitioner within the guidelines of the *Safir* test.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 15–02

IN RE ATTORNEY_YADA

ON WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT

[August 7, 2023]

JUSTICE DROZD, concurring.

I write separately to join the opinion of the Court in full but to raise additional points. The Court's decision today, rooted in the principles of procedural due process, serves as a timely reminder of the judiciary's commitment to ensuring fairness and justice. While the majority opinion aptly addresses the immediate concerns raised by the petitioner, I write separately to highlight the broader foundations that inform our decision today.

At the foundation of our legal system lies the Due Process Clause of the Fourteenth Amendment, which guarantees that no individual shall be deprived of "life, liberty, or property, without due process of law." U.S. Const., Amend. XIV. This guarantee is not a mere formality, but it is a fundamental principle of justice. Our jurisprudence has long emphasized the importance of procedural safeguards. In *Mathews* v. *Elridge*, 424 U. S. 319 (1976), the Court outlined a three-factor test to determine the specific dictations of due process: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used; (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail. Applying the *Mathews* framework to this case, the scales of justice tip unmistakably in favor

of the petitioner, it becomes evident that the petitioner's interest in not being wrongfully labeled a frivolous litigator, the risk of erroneous deprivation without a proper hearing, and the minimal burdens of adhering to the *Safir* test all point towards a clear violation of due process.

Furthermore, the Court's reliance on mandamus as a remedy emphasizes the gravity of the situation. As held in *Cheney* v. *U.S. Dist. Court* for *Dist. of Columbia*, 542 U. S. 367, 380 (2004), mandamus is a "drastic and extraordinary" remedy reserved for truly exceptional circumstances. The actions of the District Court, in this case, present such circumstances. The importance of a fair hearing, as a fundamental tenet of due process, cannot be overstated. As Justice Frankfurter eloquently stated in *Joint Anti-Facist Refugee Committee* v. *McGrath*, 341 U. S. 123, 170–71 (1951) (Frankfurter, J., concurring) ("No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it.").